

REMARKS

The Invention

The invention is directed to a polymeric matrix formed of a biodegradable, biocompatible, synthetic, amorphous polymer or semi-crystalline polymer with a degree of crystallinity in the range of from 0 to 24.5% having a porosity of between 45 to 93% and a pore size range of greater than zero to 500 microns that is suitable for attachment and proliferation of dissociated cells, wherein said polymeric matrix further comprises cells selected from the group consisting of hepatocytes, pancreatic islet cells, fibroblasts, chondrocytes, osteoblasts, exocrine cells, cells of intestinal origin, bile duct cells, parathyroid cells, thyroid cells, cells of the adrenal-hypothalamic-pituitary axis, heart muscle cells, kidney epithelial cells, kidney tubular cells, kidney basement membrane cells, nerve cells, blood vessel cells, cells forming bone and cartilage, smooth muscle cells, and skeletal muscle cells.

The Office Action

Claims 11-13 of the present application are pending.

The specification is objected to as the present application does not have the same inventorship as Mikos et al. (U.S. Patent No. 6,689,608; hereafter “Mikos ‘608”, formerly U.S. Application Serial No. 09/669,760) and Mikos et al. (U.S. Application Serial No. 08/052,387, hereafter “Mikos ‘387”) of which the present application is a continuation.

Additionally, a request is made to confirm the publication date of Vacanti et al. (*J. of Pediatric Surgery* 23:3-9 (1988)), as the publication date listed on form 1449 appears incorrect.

Claim 11 stands rejected for statutory-type double patenting as being unpatentable over claim 1 of Mikos ‘608. Claim 11 further stands rejected for non-statutory obviousness-type double patenting as being unpatentable over claims 1-9 of Mikos et al. (U.S. Patent No. 5,514,378, hereafter “Mikos ‘378”).

Claims 12 and 13 stand rejected for non-statutory obviousness-type double patenting as being unpatentable over claims 1-7 of Mikos ‘608 in view of Vacanti et al. (U.S. Patent No. 5,759,830; hereafter “Vacanti”). Claims 12 and 13 also stand rejected for non-statutory obviousness-type double patenting as being unpatentable over claims 1-9 of Mikos ‘378 in view of Vacanti.

Support for the Amendment

Claim 11 has been amended to recite the limitations of claim 12. Support for this amendment can be found in claim 12 as previously presented. In light of this amendment, claim 12 has been cancelled.

Objection to Inventorship

The Examiner objects to the inventorship of the present application because it is a continuation of an application with different inventorship. The family line to which the Examiner objects is depicted in Figure 1.

Figure 1.

U.S. Ser. No 08/012,270, now U.S.P.N. 5,514,378
Inventors: Mikos, Sarakinos, Vacanti, Langer, Cima

↓
Continuation-in-Part

U.S. Ser. No. 08/052,387, now abandoned
Inventors: Mikos, Ingber, Vacanti, Langer

↓
Continuation

U.S. Ser. No. 09/669,760, now U.S.P.N. 6,689,608
Inventors: Mikos, Sarakinos, Vacanti, Langer, Cima

↓
Continuation

U.S. Ser. No. 10/775,768, now U.S. Pat. Appl. Pub. No. 2006/0141000
Currently Listed Inventors: Mikos, Ingber, Vacanti, Langer
Correct Inventors: Mikos, Sarakinos, Vacanti, Langer, Cima

The Office objects to the present application (U.S. Serial No. 10/775,768, now U.S. Patent Application Publication No. 2006/0141000) because it does not have the same inventorship as the parent application Mikos '608. Applicants have corrected the inventive entity by providing a request under 37 C.F.R. § 1.48(a), submitted herewith. Upon correction, the present application and Mikos '608 will have the same listed inventive entities, namely Antonios G. Mikos, Robert S. Langer, Joseph P. Vacanti, Linda G. Griffith, and Georgios Sarakinos. The basis for this objection may now be withdrawn.

In addition, the present application is objected to because it does not have the same inventors as Mikos '387, of which the present application is a continuation. According to Section 201.07 of the Manual of Patent Examination Procedure (MPEP):

“The applicant in the continuation application must include at least one inventor named in the prior nonprovisional application.”

Furthermore, Section 201.03 of the MPEP states:

“An inventorship error discovered while prosecuting a continuing application that occurred in both an abandoned parent application and the continuing application can be corrected in both applications by filing a single request in the continuing application...absent such loss of inventorship overlap, correction need not be made in the abandoned application.”

Given that Mikos '387 was abandoned, but still has inventors in common with its descendants, Mikos '608 and the present application, Applicants submit that the inventorship of Mikos '387 need not be corrected.

Applicants respectfully request that these objections be withdrawn.

Verification of Reference Cited

Applicant confirms that Vacanti et al. (*J. of Pediatric Surgery* 23:3-9 (1988)) has a publication date of 1988, and that the publication date listed on form 1449 is a typographical error.

Statutory-Type Double Patenting

Claim 11 is rejected for statutory-type double patenting over claim 1 of parent Mikos '608. Claim 11 has been amended to include all of the limitations of claims 12, and, as such, is patentably distinct from claim 1 of Mikos '608. Applicants respectfully request that this rejection of claim 11 be withdrawn.

Non-Statutory Obviousness-Type Double Patenting

Claims 11-13 are rejected for non-statutory obviousness-type double patenting. Once the claims are otherwise in condition for allowance, and if appropriate, Applicants will disclaim the term of the patent subsequent to the expiration of Mikos '378 and Mikos '608, from which the present application claims priority.

CONCLUSION

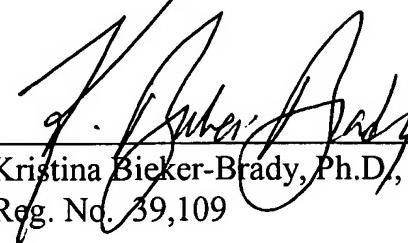
Applicants submit that the pending claims are in condition for allowance, subject to a terminal disclaimer, and such action is respectfully requested.

Enclosed is a Petition to extend the period for replying to the Office action for three months, to and including December 29, 2006, and a check in payment of the required extension fee.

If there are any additional charges or any credits, please apply them to Deposit
Account No. 03-2095.

Respectfully submitted,

Date: December 14, 2006


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